

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 299 of 1992

For Approval and Signature:

HON'BLE MR.JUSTICE M.S.SHAH
and
HON'BLE MR.JUSTICE M.C.PATEL

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the concerned : NO
Magistrate/Magistrates, Judge/Judges, Tribunal/Tribunals?

COMMISSIONER OF INCOME TAX

Versus

SARASWATI TRADING CO.

Appearance:

1. INCOME TAX REFERENCE No. 299 of 1992
MR MANISH R BHATT for Petitioner No. 1
SERVED BY RPAD - (N) for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE M.S.SHAH
and
HON'BLE MR.JUSTICE M.C.PATEL

Date of decision: 19/02/2004

ORAL JUDGEMENT

(Per : HON'BLE MR.JUSTICE M.S.SHAH)

In this reference at the instance of the revenue
under Section 256(1) of the Income-tax Act, 1961, the
following question is referred for our opinion for

assessment year 1984-85 :-

"Whether, on the facts and in the circumstances of the case, the Tribunal was right in law in holding that this was not a case of reconstitution of the firm within the meaning of Sec. 187 of the Act ?"

2. We have heard Mr Manish R Bhatt, learned standing counsel for the revenue. Though served, none appears for the respondent-assessee.

3. On the date of commencement of the accounting year relevant to assessment year 1984-85, the assessee-firm consisted of four partners. The assessee-firm as constituted by four partners continued business upto Vaishak Sud 5 on which date accounts were adjusted and closed. The firm was dissolved and deed of dissolution was duly executed. Thereafter a new partnership deed was executed by the partners of the new firm which consisted of 11 partners including four partners of the erstwhile firm. The assessee pleaded before the Income-tax Officer that two assessments should be made, one for the period upto Vaishak Vad 5 and the other upto the last day of Samvat Year 2039 because the erstwhile firm was succeeded by the new firm and provisions of Section 188 were applicable. This plea was rejected by the Income-tax Officer who held that this was a case of change in the constitution of the firm. He made one assessment for the entire year. The assessee filed appeal before the Commissioner of Income-tax (Appeals). The Commissioner of Income-tax (Appeals) accepted the plea of the assessee and directed the Income-tax Officer to make two assessments on the basis of the two returns which have been filed by the assessee. The department went in appeal before the Tribunal. The Tribunal confirmed the decision of the Commissioner of Income-tax (Appeals) by holding that this was a case of succession of one firm by another on dissolution of the erstwhile firm by act of parties and as such the provisions of Section 188 were applicable and two separate assessments for two separate periods were required to be made. Hence, this reference at the instance of the revenue.

4. At the hearing of the reference, our attention is invited to the decision of the Apex Court in CIT vs. Amritlal Nihalchand, (1992) 196 ITR 346 wherein the Apex Court has held that Section 188 mentions that it would apply when the case is not one covered by Section 187 but once it is found that no departure from the provisions of

the Indian Partnership Act is contemplated by Section 187 of the Income-tax Act, 1961, it must follow that the where there is dissolution of the erstwhile partnership firm and constitution of a new firm, the case would fall under Section 188 notwithstanding the fact that the partners of the erstwhile firm are also some of the partners in the new firm.

5. Applying the ratio of the aforesaid decision, we answer the question in the affirmative i.e. in favour of the assessee and against the revenue.

The reference accordingly stands disposed of.

(M.S. Shah, J.)

(M.C. Patel, J.)

sundar/-